

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 930 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

and

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
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GAMUIYA VAGHARI DELABHAI NANJIBHAI & ANOTHER

Versus

STATE OF GUJARAT

Appearance:

MR KG SHETH for appellants

MR S.T.MEHTA, ADDL.PUBLIC PROSECUTOR for Respondent No.1

CORAM : MR.JUSTICE S.D.DAVE and

MR.JUSTICE H.R.SHELAT

Date of decision: 18/06/96

ORAL JUDGEMENT (Per S.D. Dave, J.)

The appellants have been convicted for the offences punishable under Sections 376(2)(g) and 376 read with Section 34 of IPC. They have been awarded RI for ten years and a fine of Rs.1,000/-, in default, a further

RI of three months. They have been acquitted of the alleged commission of the offence punishable under Section 506(2) of IPC. The above said judgment of conviction and sentence rendered by the learned Sessions Judge, Amreli dated June 29, 1993 is under challenge in the present Criminal Appeal.

The appellants-accused came to be chargesheeted for the alleged commission of the offence punishable under Section 376(2)(g) of IPC on the accusation that, they had ravished the prosecutrix Rasilaben Vaghasia, a girl aged about 18 years on May 25, 1992 at about 11.00 a.m. at village Deri Pipadiya under the Amreli District. Alternatively, the accusation is that, the appellants-accused had a common intention to ravish prosecutrix Rasilaben and therefore, they have been charged with the alleged commission of the offence punishable under Section 376 read with Section 34 of IPC. They also stand charged for the offence punishable under Section 506(2) of IPC, on the accusation that they had threatened the prosecutrix to kill her.

The case of the prosecution is that, prosecutrix Rasilaben Vaghasia used to reside at village Deri Pipadiya and on the date of the occurrence, i.e. May 25, 1992, at about 11.00 a.m., she had gone to her field where her father was working with a view to provide them the mid-day meals. She was returning from her field on the bicycle, but she was thrown off from over the bicycle by the accused in the outskirts of the village and thereafter she was dragged at some distance and later on, she was successively ravished by the appellants-accused. According to the case of the prosecution, Rasilaben, after the occurrence was over, had raised hue and cry, as a result of which, the village people including the three prosecution witnesses; Ratilal Bhagwanbhai, Vaghjibhai Lavabhai, and Gobarbhai Bavabhai had come there and they had caught hold of the two accused persons who were trying to escape from the scene of the occurrence. Later on, the village people had taken the appellants-accused to the village and thereafter to the office of the Panchayat. Later on, they along with the prosecutrix, were taken to the police station, where the formal complaint came to be lodged by the prosecutrix at about 3.15 p.m. The investigation was completed and the accused persons were put on trial for the commission of the said offence. The appellants-accused had pleaded not guilty to the charges levelled against them. Any how, they have been convicted by the learned Sessions Judge, placing reliance upon the evidence which was made available by the prosecution. They have been convicted

and sentenced as indicated by us hereinabove. The said orders of conviction and sentence are in challenge before us.

Learned Counsel Mr.K.G.Sheth, appearing on behalf of the appellants-accused urges that, as a matter of fact, there is no evidence to connect the appellants-accused with the commission of the crime. According to the learned Counsel, the prosecutrix herself has not supported the case of the prosecution and even if her evidence which can be said to be the evidence of the hostile witness is accepted on the face value, then also, it is apparent that, she has faltered on two important counts, namely, the actual occurrence and the identity of the accused persons. With a view to appreciate this contention coming from the learned Counsel for the appellants, we have scanned the evidence rather carefully, with the assistance of the learned Government Counsel Mr. Mehta. At the outset, we should say that we have not been able to convince ourselves that the judgment under challenge requires a confirmation. As we would indicate elaborately, prosecutrix Rasilaben has not supported the case of the prosecution and that she has faltered on important counts not only regarding the identity of the appellants-accused, but also, on the question of the occurrence of the actual incident during which she could have been ravished by the appellants-accused. The case of the prosecution would go to show that the appellants-accused could be apprehended by the village people from the near spot and that they were taken to the village and thereafter to the panchayat and later on, to the police station. Running counter to this case of the prosecution, the evidence has been tendered which would go to indicate that, upto late evening, i.e. upto 8.30 p.m., the brothers and the members of the family of prosecutrix Rasilaben were in search of the culprits and they were moving around on the motor bikes. This is a salient feature which requires to be taken into consideration while we would examine the question regarding the establishment of the identity of the appellants-accused.

Prosecutrix Rasilaben has been examined at Exh.10 as the prosecution witness no.1. She has stated that, she had gone to the Vadi of her father on the bicycle and thereafter she was returning and at that time, two appellants-accused had intercepted her near the field of one Madhabhai and she was thrown off from over the bicycle and her mouth was gagged. She has further testified that she was taken in the vicinity of the field and later on, she was ravished against her will and

without her consent. She describes the exact spot of the occurrence as a Farja. Queerly enough, in the examination-in-chief itself, the prosecutrix says that she was thrown off from over the bicycle and was taken to the Farja, but she does not know and she has no recollection as to what had actually happened after she was taken to the Farja. If her evidence tendered in the examination-in-chief requires any credence, then one shall have to say that she was not prepared to say that there was the actual action of coitus for which she was not willing and not a consenting party. Therefore, we would prefer to say that the prosecutrix has faltered on the important aspect touching to the sub-stratum of the case regarding the actual act of coition. The matter does not rest here because, in the examination-in-chief, once again, she says that she had fallen down from over the bicycle and had lost consciousness and that she does not know as to what had transpired thereafter. She wanted to qualify her say by saying that she was unconscious when she had fallen down from the bicycle. We are not able to accept this explanation regarding her unconsciousness. Further, she says that she had no idea regarding the coital action which had followed thereafter. Therefore, once again, in the examination-in-chief, she does not speak anything regarding the coital action. Therefore, on the very first aspect of the case, the prosecution in our view, fails.

So far as the question in respect of the establishment of identity of the appellants-accused is concerned, the position cannot be said to be better. According to her own version, the incident had lasted for about one hour and according to the case of the prosecution, the accused persons were arrested from near the spot by the village people and they, in the company of the prosecutrix were taken to the village and later on, to the gram panchayat office, from where they were taken to the police station. Despite all this, prosecutrix Rasilaben had refused to identify the appellants who were in the dock of the Court at the time of her trial. This evidence tendered by the prosecutrix throws serious doubt in the case of the prosecution regarding the identity of the appellants-accused.

Learned Government Counsel Mr.Mehta has tried to urge with vehemence that this is a case in which the appellants-accused came to be apprehended from near the spot and therefore, the Court below was perfectly justified in accepting the case of the prosecution regarding the identity of the accused. But, when the

evidence of the prosecutrix and the other prosecution witnesses is scrutinised, it appears that the whole evidence is full of doubts and contradictions. Prosecutrix Rasilaben has said in her evidence, in the examination-in-chief itself that, her brothers had launched a vigorous search for the culprits and they were scanning the outskirts of the nearby villages and they were required to use the motor bikes for that purpose. She has also testified that this searching operation had continued upto 8.00 p.m. and till then, nobody was knowing the names of the culprits or the miscreants. Her say further is that the PSI had come to her even later than that and she was interrogated. Her say further is that even during this interrogation, she was not knowing the names of the culprits or the rapists. She has gone to a step further by testifying before the Court below that even on the day on which her evidence was being recorded, she was not aware of the names of the rapists-accused. If, as the case of the prosecution proceeds, the appellants were to be apprehended from the spot and if the FIR were to be lodged, ultimately, at about 3.15 p.m., how one would accept the prosecutrix to testify before the Court that her near relations including her brothers were in search of the probable accused and that nothing was clear upto 8.30 p.m. when the PSI had contacted her. If the victim and the appellants-accused were to be apprehended from the spot and if they were to be taken to the village and later on to the police station, there would be no need for the near relations of the prosecutrix to be in search of the probable accused. Moreover, there could not be any need on the part of the investigating officer to try to get certain information from her so that ultimately, the culprits could be apprehended and their identity could be established. Thus, the evidence tendered by the prosecutrix herself weakens the entire case of the prosecution. On this evidence, it is impossible for us to come to the conclusion that the appellants-accused were apprehended by the village people from near the spot. We say so even after the careful scanning of the evidence of four prosecution witnesses who have tried to support the case, on this aspect. Popat Dahyabhai PW2-Exh.12 has said that he had heard the hue and cry and had seen two men running and that they had apprehended them. He has identified the said two men as the accused in the dock of the Court. He has also testified that just after the apprehension of the accused, Rasilaben had come there and she had told him that she was ravished by the appellants. According to this witness, two prosecution witnesses, namely, Vaghji Lavabhai, and Ratilal Bhagwanbhai had taken the accused to the police

station, but, in the cross-examination, witness Popatbhai has stated that he does not remember as to whether this version regarding the apprehension was given to the police or not. Ratilal, PW3-Exh.14 makes the case of the prosecution worse in his efforts to say that the appellants could be apprehended from near the spot. His say is that, he was working at his Vadi and had heard the hue and cry and had seen two boys running and later on, the said two boys could be apprehended by him and other people. During the cross-examination, this witness says that the prosecution witnesses Vaghjibhai and Popatbhai were in his company when the appellants-accused came to be apprehended. His say further is that, two brothers of Rasilaben, namely, Vallabhbhai and Rameshbhai and one more gentleman, namely, Gobarbhai were also there in his company when the appellants-accused came to be apprehended. Vaghjibhai, PW4-Exh.21 while deposing in the same line has said that they had heard the hue and cry and ultimately two boys could be apprehended. He has identified them as the prisoners in the dock of the Court. According to this witness, the accused people were taken to the village and later on, to the gram panchayat office and thereafter to the police station. This say could not be believed because of the testimony tendered by prosecutrix Rasilaben to which a reference has been made by us earlier. As indicated by us, she has stated that nobody was knowing anything regarding the real identity of the culprits till 8.30 p.m. on that day. Moreover, partly accepting the case of the defence, Vaghjibhai has stated that when the accused persons came to be apprehended, Rasilaben firstly, had made a complaint regarding the loss of ornaments, saying that, the accused persons had robbed off her ornaments. It is his say further that, placing reliance upon this version, they had asked for the ornaments from the appellants-accused and their persons were searched also. The witness further says that when they had failed to get anything after the search, Rasilaben had come out with the case of her ravishment. If Rasilaben were to be ravished by the appellants-accused, the first complaint coming from her would be in respect of her ravishment and not in respect of the loss of certain ornaments and that could have become the second incidence. Not only this, but though witness Vaghjibhai says that the appellants-accused came to be apprehended from near the spot, he has stated in the cross-examination that even upto late night, the brothers of Rasilaben were in search of the culprits on the motor bikes. If Vaghjibhai and other persons had apprehended the accused persons from near the spot just after the incident, there could never be a need for anybody to be in search of a probable

culprit. Therefore, the evidence of Vaghjibhai also just like the evidence of prosecutrix Rasilaben, makes the case of the prosecution very weak and feeble on this count. Gobarbhai PW6-Exh.26 is the last witness in the line, who would depose regarding the apprehension of the appellants-accused from near the spot and their handing over to the police. He has stated that upon hearing the hue and cry, they all had rushed and the appellants-accused came to be apprehended. But, the evidence of Gobarbhai requires to be read along with the evidence of prosecutrix Rasilaben and Vaghjibhai PW4-Exh.21 who have clearly stated that the search was on till the late evening upto 8.30 p.m. and that the picture regarding the name or the identity of the culprits was not clear upto 8.30 p.m. when the PSI had approached prosecutrix Rasilaben. Thus, it appears that the evidence tendered by Gobarbhai PW6-Exh.26 in this respect also cannot be accepted as a truthful version.

Indeed, there has been some medical evidence brought in by the prosecution with a view to support the case put forth by the prosecutrix. This evidence would include the medical reports also. But when the prosecutrix herself has not supported the case of the prosecution regarding the actual incident of ravishment and when her evidence regarding the identity of the appellants-accused is found to be faltering, it is impossible for us to act on this evidence. As made clear by us, the evidence of supporting witness Popatbhai PW2-Exh.12, Ratilal PW3-Exh.14, Vaghjibhai PW4-Exh.21, and Gobarbhai PW6-Exh.26, instead of supporting the case of the prosecution, weakens the same. A clear picture emerges that nobody was knowing as to who could be the real culprits and that a search was on till late evening when the PSI reaches the prosecutrix. If this version is accepted, no reliance could have been placed upon the evidence of the prosecutrix and the said witnesses. At the same time, the date and the time of the FIR at Exh.11 also could not have been accepted as a correct and truthful version because, according to it, the recording of the FIR was completed at about 3.15 p.m. The evidence read by us would go to show that at 8.40 p.m., the PSI was interrogating her with a view to know something regarding the names and the identity of the accused persons. This also, according to us, is a lacuna in the case of the prosecution.

Thus, on the overall appreciation of the evidence, we are satisfied that the judgment of conviction and sentence rendered by the Court below cannot be confirmed and that it is liable to be quashed

and set aside.

For the aforesaid reasons, we allow the present Criminal Appeal and quash and set aside the said judgment of conviction and sentence. We acquit the appellants for the offence punishable under Section 376(2)(g) and 376 read with Section 374 of IPC. The appellants-accused are behind the bars and therefore, they should be set at liberty forthwith, if not required in any other criminal case or proceedings. The fine, if any paid, should be refunded to the appellants.
